

DEPARTMENT OF LAND AND NATURAL RESOURCES

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1.0 ACCESS TO PROGRAMS AND SERVICES

1.1 Introduction and Legal Requirements

The Department of Land and Natural Resources has developed and adopted this document to ensure inclusion of individuals with disabilities in all programs, services, or activities which are available to the general public. This Manual establishes a consistent approach to providing good public service and equal access for people who have disabilities to programs and services offered by the DLNR consistent with federal and state laws. The purpose of this Manual is to provide program managers and staff with a reference guide when planning a program or service to ensure equal inclusion of individuals who have disabilities as customers or program participants.

1.2 People with disabilities protected under the law

Federal and state laws prohibit discrimination against any "qualified person with a disability."

A "person with a disability" means an individual who has a physical or mental impairment which substantially limits one or more of the person's major life activities, has a record of such impairment, or is regarded as having such an impairment.

1.2.1 Person with a physical or mental impairment

Physical impairments include physiological disorders or conditions, cosmetic disfigurements, or anatomical loss affecting one or more of the body systems.

EXAMPLES: Orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Mental impairments include mental or psychological disorders.

EXAMPLES: Mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Simple physical characteristics such as baldness, left-handedness, the color of one's eyes, hair, or skin or age do not constitute physical impairments. Similarly, disadvantages attributable to environmental, cultural, or economic factors are not impairments. The definition does not include common personality traits such as poor judgment or a quick temper, where these traits are not diagnosed symptoms of a mental or psychological disorder.

Physical or mental impairment does NOT include homosexuality or bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

Drug addiction is an impairment under the ADA. A department or agency, however, may base a decision to withhold services or benefits in most cases on the fact that an addict is engaged in the "current and illegal" use of drugs. "Illegal use" of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. It does not include use of controlled substances pursuant to a valid prescription, or other uses that are authorized by the Controlled Substances Act or other federal law. "Current use" is the illegal use of a controlled substance that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem. Protected individuals include persons who have successfully completed a supervised drug rehabilitation program or have otherwise been rehabilitated successfully and who are not engaging in the current illegal use of drugs. Additionally, discrimination is prohibited against an individual who is currently participating in a supervised rehabilitation program and is not engaging in the current illegal use of drugs.

Alcohol is not a "controlled substance", but alcoholism is considered a disability.

To constitute a "disability" a condition must substantially limit a major life activity. Major life activities include, but are not limited to, activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

1.2.2 Person with a record of impairment

Federal and state laws protect not only those individuals with disabilities who actually have a physical or mental impairment that substantially limits a major life activity, but also those individuals with a record of such an impairment. This protected group includes a person who has a history of an impairment that substantially limited a major life activity but who has recovered from the impairment, as well as a person who has been misclassified as having an impairment.

EXAMPLE: A person had cancer five years ago. The cancer was significantly limiting in his life at that time, with an inability to work due to intensive and severely debilitating chemotherapy and radiation treatments. The cancer is now in remission and the man is now functioning well. He is a person with a record of an impairment (cancer).

EXAMPLE: A man with a severe episode of Post Traumatic Stress Disorder (PTSD) during his early 20's voluntarily sought psychiatric care. After treatment and in-patient hospitalization, he is now able to function adequately. Even though he does not now have an impairment, he has a record of an impairment (mental illness).

1.2.3 Person regarded as having an impairment

Federal and state laws also protect certain individuals who are regarded as having a physical or mental impairment that substantially limits a major life activity, whether or not those individuals actually have an impairment.

EXAMPLE: A woman with mild diabetes controlled by medication, is barred by the staff of a state-sponsored summer camp from participation in certain sports because of her diabetes. Even though she does not actually have an impairment that substantially limits a major life activity, she is protected under the law because she is treated as though she has an impairment.

EXAMPLE: A three-year old child born with a prominent facial disfigurement, is refused admittance to a state-run day care program on the grounds that her presence in the program might upset the other children. This child is an individual with a physical impairment that substantially limits her major life activities only as the result of the attitudes of others toward her impairment.

EXAMPLE: A man is excluded from a state-sponsored soccer team because the coach believes rumors that he is infected with the HIV virus. Even though these rumors are untrue, he is protected under the law, because he is being subjected to discrimination by the state based on the belief that he has an impairment that substantially limits his major life activities (i.e., the belief that he is infected with HIV).

1.2.4 Qualified person with a disability

In order to be an individual protected under disability discrimination laws, an individual must be a "qualified" individual with a disability. To be qualified, an individual with a disability must meet the essential eligibility requirements for the receipt of services or participation in programs, activities, or services of the state with or without reasonable modifications to a public entity's rules, policies, or practices; removal of architectural, communication, or transportation barriers; or provision of auxiliary aids and services.

The "essential eligibility requirements" for participation in many activities of the state may be minimal.

EXAMPLE: The DLNR provides information about their programs, activities, and services upon request. In such situations, the only "eligibility requirement" for receipt of such information would be a request for it.

However, under other circumstances, the "essential eligibility requirements" imposed by a state entity may be quite stringent.

EXAMPLE: A program may require those admitted to have successfully completed specified undergraduate science courses.

Health and safety factors can be taken into consideration in determining who is qualified. An individual who poses a direct threat to the health or safety of others will not be "qualified." A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by the public entity's modification of its policies, practices, or procedures, or by the provision of auxiliary aids or services. Determination that a person poses a direct threat to the health or safety of others may not be based on generalization or stereotypes about the effects of a particular disability. The determination must be based on an individualized assessment that relies on current medical evidence, or on the best available objective evidence, to assess the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate or eliminate the risk.

EXAMPLE: An adult individual with active tuberculosis wishes to volunteer in a program operated by the Department of Land and Natural Resources. The board/department may refuse to allow the individual to participate on the grounds that the individual's condition would be a direct threat to the health or safety of those participating in the program, if the condition is contagious, and the threat cannot be mitigated or eliminated by reasonable modifications in its policies, practices, or procedures.

1.3 Customer service needs of people with disabilities

This section provides information about individuals categorized into five general groupings: individuals with mobility impairments; individuals who are blind or have low vision; individuals who are deaf or hard of hearing; individuals with chronic health conditions; and individuals with learning challenges. Although the groupings are not exhaustive, nor specifically categorized as such in the ADA, the groupings will guide you when anticipating how to provide customer service to individuals with disabilities. Remember that every individual is unique and specific needs will always be personalized. Use the information in this section to provide a framework for your planning, but always remember to talk specifically to any individual with a disability who has self-identified in order to provide the best service to his or her unique needs.

Providing quality service in a nondiscriminatory manner to individuals with disabilities involves an understanding of the needs described above and being prepared, should the need arise, to respond in a timely manner as an agent of the State of Hawai'i.

Quality service also involves using language which reflects a sensitivity to current preferred terminology.

Service to customers and other program participants can be greatly enhanced by training your staff on the most appropriate way to interact or communicate with people with disabilities, learning to respect their individual needs and preferences without being patronizing, stigmatizing, or presuming stereotypes.

1.3.1 Individuals with mobility impairments

Individuals with mobility impairments include those who use wheelchairs, as well as those who are ambulatory but who have restrictions in their mobility.

A person using a wheelchair may use either a standard manual wheelchair or a motorized, battery-operated chair. The person may have anywhere from full to no use of his or her arms or legs. Some people use a wheelchair due to paralysis or loss of one or more of their lower extremities; others may use a wheelchair because walking on their own creates fatigue.

The primary needs of individuals who have mobility impairments who use wheelchairs are:

- an accessible facility which allows for full, independent mobility;
- safe emergency egress;
- access for a service dog or assistance animal;
- personal assistance handling food, materials, and other items, especially if the individual has quadriplegia and is paralyzed in the upper extremities.

Individuals who have mobility impairments but are ambulatory include those who use crutches, canes, braces, walkers, or other support devices. They usually require the use of their hands to maintain stability on their support devices. They may also have respiratory or cardiac conditions which preclude their ability to walk long distances.

The primary needs of individuals who have mobility impairments but are ambulatory are:

- an accessible facility in which major activities are located in close proximity to each other, minimizing walking distance;
- safe emergency egress;
- personal assistance handling food, materials, and other items, particularly if the individual uses a support device.

If your facility is particularly large, such as a convention center, orientation of the facility by way of a map is important, indicating the location of accessible features, especially if all elements are not accessible. For example, if only one set of rest rooms in the facility is accessible, knowing the location is important to minimize unnecessary walking. It is also important to inform a person who has a mobility impairment of the appropriate emergency egress procedures at the site.

1.3.2 Individuals who are blind or have low vision

Individuals who are blind or who have low vision may have a variety of residual visual skills and mobility capabilities. They may utilize a guide dog, white cane, or no assistive mobility device at all; some individuals will prefer a sighted guide to provide mobility and orientation.

Persons who are blind or have low vision will have differing levels of residual vision and will have different preferences for reading printed materials. The most common alternate formats are Braille, large print, audiocassette tape, or computer disk. Many individuals who are blind or have low vision cannot read Braille, especially those who have lost their sight later in life; others may not even be able to use large print. Therefore, it is important that all the options be offered to an individual, with the preferences of the person taken into consideration.

The primary needs of individuals who are blind or who have low vision are:

- an accessible facility, particularly free from safety hazards and protruding objects, with tactile signage;
- safe emergency egress;
- written information presented in an alternate format such as Braille, large print, audiocassette, or computer disk;
- access for a guide dog;
- a well-lit facility to maximize seeing;
- personal assistance in picking up and handling items such as food and materials.

Regardless of an individual's level of independent mobility, a person who is blind or who has low vision may need some orientation to your site if he or she must navigate the site. The orientation should include the location of the rest rooms, telephones, drinking fountains, registration desk, elevators and/or stairs, eating facilities, and guest accommodations, if appropriate. An orientation can be provided by a sighted person navigating the person who is blind or who has low vision through the facility, by an audiocassette tape and tape player explaining the site layout, or by a tactile map of the site. When orienting a person to the site, it is important to note where a person might take their guide dog to be relieved or walked. It is also important to inform a person who is blind or who has low vision of the appropriate emergency egress procedures at the site.

1.3.3 Individuals who are deaf, hard of hearing or deaf-blind

Individuals who are deaf or hard of hearing may have a range of hearing capabilities. The residual hearing of people who are deaf or hard of hearing will vary considerably. Some may not be able to hear any sound, while others may have difficulty with certain decibel levels or being able to distinguish between various types of sound (voice, music, background noise, etc.).

The primary needs of persons who are deaf or hard of hearing are:

- enhancement of information which is presented orally or aurally by an assistive listening system, sign language interpreter, or captioning;
- an accessible facility, particularly with a text telephone and amplification devices;
- access for a signal dog;
- safe emergency egress.

Although some people who are deaf or hard of hearing may have lip-reading skills, it is not appropriate to rely upon lip-reading for communication. Under the best circumstances of one-to-one communication, a person who is a good lip reader will still only comprehend 30-40 percent of what is spoken. Therefore, it is necessary to plan an alternative to lip-reading. The most common solution is to utilize a sign language interpreter. Real-time captioning and computer-assisted note taking are also options. The availability of speeches and other presentations in written text to be read will also help a person who is deaf or hard of hearing to understand the context more comprehensively.

Persons who are hard of hearing may rely upon an assistive listening device to augment their hearing. They may have a hearing aid or use a portable listening amplification system such as an audio loop, FM system, or infrared system.

1.3.4 Individuals with chronic health conditions

Persons with chronic health conditions have various needs, each unique to his or her medical condition. Many people with chronic health conditions will not be visibly disabled. As someone planning your program, service, or activity, you will most likely only know that a person needs special arrangements through special request. Some of the more common conditions and their requirements include:

- a person with diabetes may need access to refrigeration in order to store insulin;
- a person who has hemophilia may need access to refrigeration to store blood clotting Factor K;
- a person who is hypoglycemic may need immediate and around-the-clock access to food such as juices or fruit;
- a person who uses a portable respirator or dialysis may need space for treatment;
- a person with a metabolic condition may need special meals;
- a person with chemical insensitivity or allergy may need an environment which is smoke-free or otherwise minimizing in allergic chemicals or pollutants.

1.3.5 Individuals with learning challenges

Individuals with learning challenges include those who have mental retardation or learning disabilities. The nature of an individual's learning challenge will vary according to the specific impairment or neurological deficit. Individuals may have difficulty writing or reading (particularly at a fast pace), processing auditory information (particularly complex information), maintaining attention, comprehending directions, or processing input from multiple sources. Similar to individuals with chronic health conditions, people with learning challenges will probably not be visibly disabled and you will likely only know that a person needs special arrangements through a special request.

Many of the accommodations or aids which are suitable for individuals with other disabilities will also be appropriate to meet the needs of individuals with learning challenges. Some of the possible accommodations for an individual with a learning challenge include:

- written materials in an alternate format such as audiocassette tape, in simplified outline format, or in summary format;
- color coding of materials for easy reference;
- personal assistance in note taking, providing orientation, etc.;
- permission to use personal audiocassette tape recorders to record information for later re-listening.

It is important to recognize that the ADA does not expect that the content of your program be changed in order to be understood by a person with a learning challenge. In fact, there are presentations which are not understood by many people in an audience, not because of a learning challenge but because of the sophistication of the content. However, efforts should be made to maximize the ability of a person to understand the content of whatever is being presented if his or her difficulty is the result of an impairment which can be at least partially compensated for by an accommodation or auxiliary aid.

The following summary chart is a compilation of the needs of individuals with disabilities as described in this section.

SUMMARY CHART
THE NEEDS OF INDIVIDUALS WITH DISABILITIES

Person with a Disability	(Possible) Needs
Individuals with a mobility impairment	Accessible facility Safe emergency egress Access for a service dog or assistance animal Personal assistance
Individuals who are blind or have low vision	Accessible facility Safe emergency egress Written information in alternate format Access for a guide dog Well-lit facility Personal or mobility assistance
Individuals who are deaf or hard of hearing	Oral or aural information in an alternate format Accessible facility Access for a signal dog Safe emergency egress
Individuals with chronic health conditions	Access to refrigeration Access to special foods Smoke-free or non-allergic environment
Individuals with learning challenges	Written information in an alternate format Color coding of important information Personal assistance

2.0 GENERAL NONDISCRIMINATION REQUIREMENTS

It is the policy of the Department of Land and Natural Resources to ensure that people who have disabilities are not denied access to programs and services solely on the basis of their disabilities. This policy is based on federal legislation, including the Americans with Disabilities Act and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, and State legislation, Hawai'i Revised Statutes, Chapter 368. It is reaffirmed by the Governor's Administrative Directive 97-03.

This policy applies to all programs, services, and activities of departments and agencies of the Department of Land and Natural Resources.

An EXAMPLE of a "program" is parks, harbors or forestry.

An EXAMPLE of a "service" is licensing or testing or an information hotline.

An EXAMPLE of an "activity" is a tour or public hearing or ground-breaking ceremony.

This Section discusses the major principles of nondiscrimination as applicable to departments and agencies of the DLNR.

2.1 Equal opportunity to participate

In providing access to programs and services of the DLNR, departments and agencies must ensure that:

- (a) qualified individuals with disabilities are not denied an opportunity to participate in and benefit from any program or service;
- (b) individuals with disabilities are afforded an opportunity that is equal to or as effective as that provided others; and
- (c) individuals with disabilities are not required to meet criteria for participation that screen out people with disabilities either directly or indirectly, unless such criteria are necessary for the provision of the program's activities.

EXAMPLE: An individual who is deaf does not receive an equal opportunity to participate in a public hearing conducted by the DLNR if he or she is unable to hear the proceedings.

EXAMPLE: A student who uses a wheelchair does not receive an equal opportunity to participate in a tour if the site is not accessible to individuals who use wheelchairs.

This policy, consistent with the Americans with Disabilities Act, requires an equal opportunity to participate, but does not guarantee equality of results.

2.2 Reasonable modifications of policies, practices, or procedures

Departments and agencies of the DLNR must reasonably modify their policies, practices, or procedures in order to avoid discrimination toward people with disabilities.

EXAMPLE: The Department of Land and Natural Resources maintains parks for the public. There is a 'no pets - no animals' policy when camping in state parks. An individual with a disability is accompanied by a service animal and wishes to have that animal accompany him or her when camping. The Department of Land and Natural Resources must modify the 'no pets - no animals' policy to permit access for this person and the service animal.

A modification is NOT required, however, if it would fundamentally alter the nature of the program or activity.

EXAMPLE: A person with a mobility impairment asks the Department of Land and Natural Resources to pave all trails so people in wheelchairs are able to travel on a smoother path. This action would likely alter the fundamental nature of the outdoor trail.

2.3 Surcharges and additional requirements

At times, compliance with equal opportunity laws may require an additional cost. Although an additional cost may be incurred by the department or agency, and the cost may be unforeseen or unbudgeted, the department or agency cannot impose extra charges solely upon people with disabilities to cover the costs of these expenses for effective communication, program modifications, or access features.

EXAMPLE: The DLNR provides interpreter services to participants who are deaf, removes architectural barriers for participants who are mobility impaired, and provides readers for participants who are visually impaired. The Department or Agency cannot place a surcharge on an individual with a disability (such as a participants who are deaf who benefited from interpreter services) or on a group who have disabilities (such as all participants who have mobility impairments who benefited from barrier removal).

The program or service may not impose any additional requirements or burdens on people with disabilities that they do not require of all other participants in the program.

2.4 Integrated settings and separate programs

A primary goal of nondiscrimination legislation is the equal participation and inclusion of individuals with disabilities in the "mainstream" of society. A major principle of mainstreaming is that individuals with disabilities must be integrated to the maximum extent appropriate. Programs, services, or activities must be delivered in the most integrated setting appropriate to the person's level of need.

Separate programs to provide equal opportunity to benefit from the program are permitted only when necessary. Such programs, however, must be specifically designed to meet the individual needs of people who have disabilities for whom they are provided.

EXAMPLE: The DLNR hosts an exhibit. Viewers are not allowed to touch the exhibits because handling can cause damage to the objects. The Department may offer a special tour for individuals with vision impairments where such individuals are permitted to touch and handle specific objects on a limited basis.

However, when separate programs are provided, qualified people who have disabilities still cannot be excluded from participating in the regular program or required to accept special services or benefits. Individuals may not be required to accept special benefits or programs if they choose not to do so.

EXAMPLE: People who have visual impairments may not be denied access from a standard exhibit, although they may be required to abide by the "no-touching" policy for regular exhibit pieces.

Qualified individuals with disabilities are entitled to participate in regular programs, even if the program sponsor does not reasonably believe that the person can benefit from the regular program, assuming there are no health and safety factors to be considered.

EXAMPLE: The DLNR offers hunting classes through their adult education program. The instructor may not exclude a person who is deaf from the class. Even if they don't, they have a right to participate.

The ability to provide full integration, if separate programs are available, will vary on a case-by-case basis.

EXAMPLE: The DLNR conducts hunting classes for the public at-large. For a single class, the DLNR decides to provide a Class interpreted in sign language at one class per week. In setting up the schedule, the DLNR consults the deaf and hard of hearing community, decides on a different time and day each week in order to offer a full range of choices, and publicizes the availability of the interpreted performances. Given this range of choices, it may not be necessary to provide a sign language interpreter at any other performance to offer complete integration at all performances.

2.5 Eligibility criteria

Programs or services of the DLNR may not impose eligibility criteria which tend to screen out individuals with disabilities unless it can show that such requirements are necessary for the provision of the program, service, or activity or would fundamentally alter the nature of the program, service, or activity.

EXAMPLE: The DLNR may not prohibit people who use wheelchairs from participating in state-sponsored hunting programs solely because it believes that individuals who use wheelchairs probably cannot maneuver well enough to participate. Each participant's situation must be considered individually. A blanket exclusion would violate the rights of people who have disabilities. Likewise, requiring only individuals with disabilities to demonstrate hunting competency would be discriminatory.

2.6 Safety requirements

Departments and agencies may impose legitimate safety requirements for the safe operation of their services, programs, or activities. However, a specific program or service must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals who have disabilities, and must apply these safety requirements to others at risk.

EXAMPLE: The DLNR may establish a legitimate criteria of swimming as a pre-requisite to enrolling in a scuba diving class if it can demonstrate that being able to swim is necessary for safe participation in the class. It can require all participants to be individually tested to meet that criteria. This is permitted even if requiring such a test would tend to screen out people who have certain kinds of disabilities.

2.7 Unnecessary inquiries

A program or service may not make unnecessary inquiries into the existence of a disability.

EXAMPLE: A DLNR, office open to the public, notices that an individual enters with a dog. The office has a "no pets except for service animals policy," which is appropriate. Asking a person to show proof of licensure of the dog as a assistance animal is an unnecessary inquiry.

2.8 Personal devices and services

A program or service is not required to provide individuals who have disabilities with personal or individually prescribed devices, (e.g., wheelchairs, prescription eyeglasses, or hearing aids) or to provide services of a personal nature (e.g., assistance in eating, toileting, or dressing).

EXAMPLE: The DLNR offers adult education classes in the community. Upon enrolling in a course, one of the participants indicates that he is having difficulty seeing the chalkboard for instructions. The department is not required to purchase glasses for the person to enable him to see better. However, if the person were to need an auxiliary aid or service, such as materials in alternate format, these aids would not be considered personal services, and therefore, must be considered.

Of course, if personal services or devices are customarily provided to the individuals served by the department or program these personal services should also be provided to individuals who have disabilities.

2.9 Maintenance of accessible features

Programs or services must maintain, in working order, equipment and features of facilities that are required to provide ready access to individuals with disabilities. Isolated or temporary interruptions in access due to maintenance and repair of accessible features are permitted. Also, when an accessible route is provided to the location of a program, service, or activity, the route must remain accessible and not blocked by obstacles such as furniture, cabinets, or potted plants.

EXAMPLE: The DLNR has a three-story building with an elevator. It would not be appropriate if, in order to save energy, the passenger elevator is turned off during the hours when the building is open.

2.10 Contracting with external organizations and procurement contracts

Departments may not discriminate on the basis of disability in contracting for the purchase of goods and services or in any procurement contract.

EXAMPLE: The DLNR, in its contract for tour operators, may not discriminate in its selection of contractors on the basis of disability, either because the company is owned by an individual who has a disability or employs individuals who have disabilities who might work as a tour guide.

2.11 Licensing and certification

Departments and agencies may not discriminate on the basis of disability in their licensing, certification, and regulatory practices. When the DLNR administers an examination as a requirement toward obtaining a license, it must provide auxiliary aids for applicants who have disabilities and administer the examination in an accessible location. An applicant is a "qualified person who has a disability" if he or she meets the essential eligibility requirements for that license or certification.

EXAMPLE: The DLNR Boating Program Licensing Division administers an examination for persons wishing to obtain a boating permit. The examination must be held in a location which permits a person who has a mobility impairment to attend. If the examination has a written component and a person who is visually impaired wishes to take the exam, auxiliary aids such as a reader, large print, Braille, or audio cassette tape must be provided. If the examination has an audio or oral component and a person who is deaf or hard of hearing wishes to take the exam, auxiliary aids such as a sign language interpreter or computer assisted note taker must be provided.

While many programs and activities of the DLNR do not have significant eligibility requirements, licensing programs often do require applicants to demonstrate specific skills, knowledge, or abilities. Those licensing departments may not discriminate against qualified individuals who have disabilities who apply for licenses but may consider factors related to the disability in determining whether a person is qualified.

The department or agency does not have to lower or eliminate licensing standards that are essential to the licensed activity. Whether or not particular requirements are essential must be determined on a case-by-case basis.

EXAMPLE: The agency licenses tour operators. In the licensing application process, the department may have to provide an auxiliary aid or service (e.g., reader, sign language interpreter) or modify the licensing application process (e.g., to provide additional time). However, the department is not required to eliminate a requirement to pass a written examination because it is too difficult for an applicant with a disability to complete.

In addition, departments and agencies may not establish requirements for programs that are certified or licensed that have the effect of limiting opportunities for participation or employment of people who have disabilities.

This requirement does not impose a responsibility to regulate the activities of privately-run programs that are merely licensed by the DLNR beyond the administrative requirements set forth by state law or state administrative rules. An activity of a licensee does not become a "program or activity" of the DLNR merely because it is licensed by the DLNR.

2.12 Retaliation or coercion

Individuals who assert their rights under disability discrimination laws, or assist others in asserting their rights, are protected from retaliation. The prohibition against retaliation or coercion applies broadly to any individual or entity that seeks to prevent an individual from exercising his or her rights, or to retaliate against him or her for having exercised those rights. Any form of retaliation or coercion, including threats, intimidation, or interference, is prohibited, if it interferes with the rights of that person.

EXAMPLE: The DLNR receives a complaint from a person who uses a wheelchair regarding the lack of accessibility at one of its facilities which recently underwent alterations. In fixing the problem, the department official releases the name, address, and phone number of the complainant and tells the staff to make sure they let the person who has a disability know that he or she is a troublemaker. If this has the effect of intimidating the complainant, it may be considered retaliation.

2.13 Association

Programs or services may not discriminate against individuals, organizations, or other entities because of their known relationship or association with people who have disabilities. This prohibition applies to cases where the DLNR program or service has knowledge of both the individual's disability and his or her relationship to another individual, organization, or entity. In addition to familial relationships, the prohibition covers any type of association, if the discrimination is actually based on the disability.

EXAMPLE: A DLNR program may not refuse admission to a summer camp program to an individual whose brother is HIV positive.

3.0 COMMUNICATION ACCESS REQUIREMENTS

Departments and agencies of the DLNR shall ensure that people with communication disabilities are provided a means of communication that is as effective as that provided to people without disabilities.

This commitment is reaffirmed in Governor's Administrative Directive 97-02.

Divisions and agencies of the DLNR must provide effective means of communication to people who have visual, hearing, speech, or cognitive disabilities. Communication support must be provided in a manner that enables people who have disabilities to participate on an equal basis with all others, unless to do so would result in a fundamental alteration to the program or activity, or would result in an undue financial or administrative burden.

In order to ensure effective communication, DLNR Divisions and agencies are required to make available appropriate auxiliary aids and services upon the request of a qualified person with a disability.

DLNR divisions and agencies may not charge individuals with disabilities for the cost of providing communication access. They must build into the budget for the program, service, or activity the costs of auxiliary aids and services such as sign language interpreters, Braille, etc., by spreading the costs to all participants. (Refer to Section 2.3 on Surcharges for more information.)

EXAMPLE: The Department offers a free workshop for the public on new regulations. A person who is deaf wishes to attend the workshop and requests a sign language interpreter for the hour-long session. The cost of the sign language interpreter is \$38. The department may not charge the person who is deaf for the cost of the sign language interpreter.

3.1 How to choose the type of auxiliary aid or service

Departments and agencies must provide an opportunity for individuals who have disabilities to request the auxiliary aids and services of their choice and must give "primary consideration" to the choice expressed by the individual.

"Primary consideration" means that the state department or agency must honor the choice, unless it can demonstrate that another equally effective means of communication is available, or that using the means chosen would result in a fundamental alteration in the service, program, or activity or in an undue financial or administrative burden.

After receiving a request, departments and agencies should consult with the individual making the request to determine the most appropriate auxiliary aid or service. The individual who has a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective. What works for one person who has a disability may not work for another person with the same disability.

EXAMPLE: An individual who is blind from birth and learned to use Braille may find that materials in Braille format are easiest to read and comprehend. The individual may or may not have enough residual vision to read large print materials. On the other hand, an elderly person who has slowly lost vision may have never learned Braille. For that person, a Braille transcript may be useless. Large print or audio tape may be more appropriate.

In deciding upon the type of auxiliary aid to be provided, the department or agency must take into consideration a number of factors:

- Duration (length of time) of the communication is a factor. Longer, more detailed exchanges often require more powerful and faster modes of communication.
- The context in which the communication is taking place is a factor. Communication during a workshop may be different from a one-to-one over-the-counter transaction where the communication can be slowed to a comfortable pace or where repetition is easier. Environmental conditions, such as the difference between a structured office setting and an outdoor recreational setting will influence the effectiveness of the communication.
- The number of people involved is a factor. Communication techniques that are effective between two people might not work well in a group context due to the difficulty of understanding multiple simultaneous conversations.
- The importance of the communication is a factor. Some communications, such as those involving legal, financial, health and safety issues, are more important than others and should be provided in ways that guard carefully against errors, omissions and misunderstandings. In all circumstances, the importance of the communication, the potential impact of the information, and the consequences of conveying incorrect information should be taken into consideration. Providing information on a person's delinquent tax payments has more financial and legal impact and consequences to a person than directions to the nearest bus stop.

In general, the longer, more complex and important communications require more analysis on the part of the department or agency to ensure that the highest and most effective communication has been provided.

3.2 Auxiliary aids and services for people who are deaf, hearing impaired or blind

If a program or service provided by the DLNR transmits or gives out information in audio or verbal format, it may be necessary to provide an alternate format for a person who is deaf or hard of hearing.

Keep in mind that the type of auxiliary aid or service will depend on the individual's preferred mode of communication. A person who is deaf or hard of hearing should be able to communicate with others as effectively as others participating in the program or service.

Providing effective communication may require an auxiliary aids or services. Examples of auxiliary aids or services for people who are deaf or hard of hearing include, but are not limited to:

- qualified interpreters
- note takers or computer assisted note takers
- written material
- real-time transcriptions or video text displays
- amplified and hearing-aid compatible telephones
- assistive listening devices
- open and closed captioning
- caption decoders
- TTYs (teletypewriters), TDDs (telephone devices for the deaf) or TTs (text telephones)

3.3 Auxiliary aids and services for people with visual impairments

If a program or service provided by the DLNR transmits or gives our information in printed or written format, it may be necessary to provide an alternate format for a person who has a visual impairment. In addition, if participation in a program or service requires navigation and sight, assistance may also be necessary.

Keep in mind that the preferred auxiliary aid or service will depend on the individual's preferred mode of communication.

Auxiliary aids and services for people who have visual disabilities include, but are not limited to:

- print information provided on tape cassettes, on computer diskettes, in Braille and in large print, or read by skilled readers;
- verbal descriptions of action and visual information to enhance the accessibility of performances and presentations;
- a staff member serving as a guide to enable a person who has limited vision to locate items or to find his or her way along an unfamiliar route.

Providing a reader does not mean that it is necessary to hire a full-time person for this service. The responsibilities of a reader may often be fulfilled by an employee who performs other duties; alternatively, a free-lance reader could be hired on an hourly basis. However, a reader for a person who is visually impaired must read well enough to enable the individual to effectively participate in the program or service. It would not be an effective auxiliary aid to provide a reader with poor reading skills. This would hinder the participation of the individual who has a disability.

When choosing to put materials in an alternate format, several options can be undertaken.

3.4 Auxiliary aids and services for people who have cognitive disabilities

Individuals with cognitive disabilities, a broad term covering a variety of conditions including mental retardation, head injury, mental illness, and learning disabilities often have difficulty processing information which is complex or not presented in an easily understood manner. The key to providing effective communication is often to utilize a communication style which is easy to understand, although it is not always possible to have the person understand all of the information presented, if their disability limits their mental processing. However, every opportunity should be made to ensure that information is understood, and that may mean providing an auxiliary aids or services.

- readers
- communication assistants
- rewording of information to use clear and concise language or repetition
- pictograms
- graphic presentation of information

3.5 Auxiliary aids and services for people with speech impairments

Providing information, either in print or written format, is not usually a communication barrier to people with speech impairments, unless there is another disability also present. A person with a speech impairment has difficulty sending, not receiving information. The auxiliary aid or service is intended for the receiver of information, usually the staff of a state program or service, to understand the communication contents of the person with a speech impairment.

The most effective auxiliary aid or service for a person with a speech impairment is usually:

- written material
- more active and acute listening on the part of the listener

Often, a person with a speech impairment who knows that his or her speech may be difficult to understand will choose to put as much communication in writing. If that is not possible, then other options are:

- communication assistants who are familiar with the individual's speech pattern and who repeat the context of the individual's statement in clear voice
- note takers
- typewriters or other devices such as TTYs, TDDs, or TTs used also by individuals who are deaf or hard of hearing

4.0 PRINTED INFORMATION

Virtually all departments and agencies of the DLNR prepare materials in printed format. The printed information may describe the type of programs and services offered, eligibility benefits, general promotional information, data and statistics, location of programs and services, phone numbers, and other information.

The printed information may include brochures, fact sheets, newsletters, press releases, annual reports, master plans, or other similar documents.

When departments and agencies offer printed information to the public, the information must be made available in an alternate format (e.g., Braille, large print or audiocassette tape), if requested, for use by a person who is not able to read the printed format.

Remember that simply reading some information aloud to a person may be enough to communicate the information written on a paper. If this is satisfactory to a person with a visual impairment, then producing the document in alternate format may not be necessary. However, if the document is provided in writing to the public and if the person wishes it in alternate format, then the department or agency is obligated to provide it.

All materials do not have to automatically be made available in an alternate format, if no request is made. However, you must know how to obtain the alternate format and be willing to do so for a person when requested. You should not convey an attitude that the request is either unwarranted or an imposition. Also, it is not appropriate to question the legitimacy of a request for alternate format, nor to ask the user to provide proof of documentation of his or her inability to read standard print prior to fulfilling the request for alternate format.

If your department or agency is sponsoring an event (e.g., a workshop, conference, training session, tour, open house) you should determine several weeks ahead of time what printed materials will be used as part of the event. Arrangements should be made to translate those materials into an alternate format, if requested, as the time period may be limited.

Finally, remember that you may not charge a person who has a disability with the cost of producing the material in an alternate format. That is considered a surcharge which is not permissible (see Section 2.3). You may charge the same cost for the alternate format material that you charge anyone else for the equivalent amount of printed information.

Alternate format may take several forms. The most common are large print, Braille, audiocassette tape, and computer diskette. Each alternate format is different and described below.

4.1 Large print

Large print is an appropriate format for many people with low vision who still have some residual vision. It is also a relatively easy format to produce by altering the computer font size and format, if the original document was generated on the computer.

4.2 Braille

Braille is also an appropriate format for some people who are blind. Although only a small percentage of people who are blind are Braille readers, for those who have learned to read Braille, it is highly efficient and desirable. Many people who are born blind have learned Braille since their youth and are as adept and fast at reading Braille as a person who is sighted reading printed materials. Braille users can also skim material similar to a sighted person skimming printed material. Material in Braille format is also desirable when a reader who is blind would like to have the document for later reference. Producing materials in Braille usually requires special equipment, training, and additional preparation time.

4.3 Audiocassette tape

Audiocassette tape is often the most efficient alternate format to produce by a department or agency. It is also useful for individuals who have little residual vision and for whom large print is still difficult or who have never learned to read Braille. Producing materials on audiocassette tape can usually be done in-house, with a modest amount of preparation and common sense, by an individual with an easy-to-hear, non-monotone voice and sufficient time to tape in a quiet location. Audiocassette tape format has the advantage of being easy to listen to by the user, much as a person would listen to information via a radio. However, audiocassette tape may not be as easily skimmed by the listener, who may have to listen to an entire tape before finding the most useful sections to him or her.

If you make an audiocassette tape for use onsite, make sure that you provide a portable cassette machine with earphones available on loan so that the person is able to listen to the tape thoroughly without disturbing other attendees.

4.4 Computer diskette

A computer diskette with materials in ASCII or other format requested by the person who has a disability can be provided to the person prior to an event. Then the person is able to prepare his or her own materials in the format he or she prefers.

**CHECKLIST
FOR ENSURING PRINTED LITERATURE
IS ACCESSIBLE**

YES NO

- | | | |
|---|---|---|
| — | — | Arrangements have been made to translate printed materials into large print format, if requested. |
| — | — | Arrangements have been made to translate printed materials into Braille, if requested. |
| — | — | Arrangements have been made to translate printed materials onto audiocassette, if requested. |
| — | — | If YES, arrangements have been made to have a cassette player with an earphone available, on loan, to listen to the tape. |

5.0 ANNOUNCEMENTS AND PUBLICITY MATERIALS

If you are hosting an activity or event (e.g., a tour, open house, workshop, or conference) you may often have an announcement or publicity flyer which invites the public to participate or attend the activity or event. Remember that the DLNR's obligation to provide access is the same whether the DLNR is the sole sponsor or a co-sponsor of the activity or event.

Your activities or events may come in many different forms or shapes. Some may have a registration while others may not. Some may charge a fee while others may not. Some may simply invite the public to provide comment on an activity or document which the department or agency is making available to the general public.

Announcements, brochures, and publicity materials will play an important role in determining how accessible your activity or event is for people with disabilities. Your announcements will be the primary means by which you inform people with disabilities that you welcome them as part of your audience and are willing to assist in making the activity or event more accessible. Your announcements and other publicity materials need not contain a full description of all the accessibility features of the activity. They merely need a statement to alert attendees that you have taken accessibility into consideration and then provide the name of a follow-up contact person and accessible phone number (by voice and TTY).

Printed information should ensure maximum readability for individuals who are blind or who have low vision.

Your announcements should contain your phone number. Ideally, your phone number should be accessible by a TTY for individuals who are deaf, hard of hearing, or speech-impaired. If you do not have a TTY, ensure that your staff are knowledgeable as to how to receive an incoming phone call from a person using the Telecommunications Relay Service (TRS).

**CHECKLIST FOR ENSURING
ANNOUNCEMENTS, BROCHURES, AND PUBLICITY
ARE ACCESSIBLE TO PERSONS WITH DISABILITIES**

YES NO

- | | | |
|---|---|---|
| — | — | Appropriate wording has been used to inform attendees that requests on the basis of disability can be arranged. |
| — | — | The phone number on the announcements, brochures, and publicity materials is accessible via a TTY with a TTY number listed. |
| — | — | If YES, staff is knowledgeable on how to use the TTY. |
| — | — | If NO, staff is knowledgeable on how to use the Telecommunications Relay Service (TRS). |
| — | — | The announcements, brochures, and publicity materials are typeset for easy reading. |

6.0 REGISTRATION FOR ACTIVITIES OR EVENTS

When hosting an event, such as a conference, workshop, tour, etc., you may have a registration process (usually a form) for enrollment.

Although the primary reason for registration is usually to control the capacity of the attendance and to collect registration fees, if applicable, your registration process will also be the key to a successful accessible event. You will be able to use the registration form to obtain specific information regarding the special needs of your audience. Knowing your audience is the one way you can successfully plan for their needs. The registration form offers an opportunity for someone with a disability to identify in advance personal needs for assistance or accommodation.

The registration form is an opportunity to obtain the following information:

- If any participant needs materials in an alternate format
- If any participant requires a sign language interpreter or other communication access service
- If any participant requires auxiliary personnel for mobility, eating, or other assistance
- If any participant has special dietary needs
- If any participant needs accessible parking
- If any participant has any other unique needs relating to his or her disability

Advance registration forms are highly encouraged for events even if you have no registration fee, in order to avoid unanticipated, last minute, or on site requests for assistance. Remember, however, that you cannot require advanced registration solely for people with disabilities who have special needs requests, because that would establish discriminatory eligibility criteria. If you have an advanced registration process, you must ask all your attendees to register.

Your registration forms should be developed with the same consideration for alternate formats as previously mentioned for printed information.

Ideally, your registration form should also contain your TTY number. Your registration form should ask the participants to list their phone number so that your staff is able to make a follow-up call to the person and confirm that the special request has been received and will be honored appropriately. It is also an opportunity to find out if an option other than the one requested on the form is appropriate.

The wording on your registration form should be more specific than the wording on your general announcements or publicity materials.

**CHECKLIST FOR ENSURING
THE REGISTRATION PROCESS IS ACCESSIBLE**

YES NO

___ ___ Appropriate wording has been used to inform attendees that requests on the basis of disability can be arranged.

___ ___ The phone number on the registration form is accessible via a TTY and has that TTY number listed.

___ ___ If YES, staff knows how to use the TTY.

___ ___ If NO, staff knows how to use the Telecommunications Relay Service (TRS).

___ ___ The registration form is typeset for easy reading.

7.0 CATERING OR BANQUET SERVICES

The DLNR may often include catering of banquet food service as a part of the program, service, or activity conducted. Food service may include formal meals as well as informal receptions and offering of refreshments.

If a department or agency is hosting an activity which will involve food as a part of the program or activity, attention should be paid in the planning to respond to the needs of a person who has a disability. If the activity is a conference, workshop, or training activity with a registration form, the relevant information on an individual's need due to a disability should be made known through the registration process. However, not all catering or banquet services are for events which have a registration form. In those instances, you must be prepared to respond to on-site requests by making the proper contingency plans ahead of time in the event that a request is made.

The manner in which food is served at meals or breaks can affect the participation level of many individuals who have disabilities. If people who are blind or have low vision or have mobility impairments attend your activity and a meal is provided, a sit-down, rather than buffet-style meal should be discussed with the catering service, since standing in lines and serving food is difficult. However, if a buffet is planned, arrangements should be made to provide assistance in selecting food and carrying plates for persons having limited manual dexterity or stability in carrying food. Also, banquet and catering staff should be appropriately informed ahead of time if individuals who are blind or who have limited manual dexterity request that their food be cut into smaller portions.

Some people who have disabilities, particularly those with chronic health conditions, have dietary needs, and arrangements should be made with the catering staff to provide special meals (e.g., low sodium, sugar-free, salt-free food), if requested.

**CHECKLIST FOR ENSURING
CATERING OR BANQUET SERVICES ARE ACCESSIBLE**

YES NO

— — Arrangements have been made to provide assistance in selecting food, and/or carrying plates in a buffet-style arrangement, if requested.

— — Arrangements have been made to inform banquet and catering staff of special food or dietary needs, if requested.

8.0 PHONE SERVICES

Many departments and agencies provide customer service over the phone. The nature of the "customer service" may vary, including providing information, applying for programs or benefits, registering for events, or reporting information. The "customer" may be a specific group of individuals eligible for the program or service, vendors who conduct business with state departments or agencies, or the public at-large.

Since phone services customarily rely upon transmitting information in spoken or oral format and receiving information in aural or auditory format, the phone is not an accessible means of communication for people who are deaf, hard of hearing, or who have speech difficulties, if a TTY is not available. Use of a TTY or the Telecommunications Relay Service (TRS) ensures accessible phone services.

TTYs (Teletypewriters)

TTYs are also known as Text Telephones (TTs) or Telecommunications Devices for the Deaf (TDDs). The preferred terminology among the deaf community is "TTY".

A TTY is a device which is used in conjunction with a phone which permits a person who is deaf, hard of hearing, or speech impaired to type messages which are sent electronically by means of the phone line to the receiver on the other end. The recipient must also have a TTY in order to receive the message on a screen or tape. A TTY is the most direct and effective means of communicating via the phone for a person who is deaf, hard of hearing, or speech-impaired because it allows direct communication without the need for an intermediary.

Every program or service which has a TTY should ensure that its staff is trained in how to use the TTY to receive an incoming call and place an outgoing call.

Telecommunications Relay Service (TRS)

GTE Hawaiian Tel operates a relay service in which a communications assistant serves as an intermediary between a TTY user and a voice user. The Telecommunications Relay Service (TRS), in many circumstances, can provide a means for communication. Every program or service which has public phone access must ensure that all employees who use the phone know how to use the TRS to initiate an outgoing call or receive an incoming phone call, especially if there is no TTY available.

8.1 Emergency services

Some phone contact within departments or agencies of the DLNR are considered emergency in nature. Those programs must ensure that contact with people who are deaf, hard of hearing, or speech-impaired is direct through the use of a TTY. Use of the TRS is not appropriate for an emergency service.

8.2 Hot lines and other "special lines"

Some phone services conducted by departments and agencies of the DLNR are hotlines, customer complaint lines, or other special lines which are designated for a specific purpose to receive or impart information by an employee with knowledge on how to respond to the inquiries. These phone lines may be accessed through the TRS, although it is highly recommended that programs give serious consideration to the placement of a TTY in those offices due to the confidentiality of the information conveyed or the importance of having a timely response.

8.3 Regular phone contact with the public

Most departments and agencies of the DLNR have some contact with the public by phone. The contact may be infrequent or routine. In these programs, it is up to the program administrator to determine the need for a TTY. A TTY is not required in these programs, although certainly encouraged in order to provide greater access for people who are deaf, hard of hearing, or speech impaired.

**CHECKLIST FOR ENSURING
TELEPHONE SERVICES ARE ACCESSIBLE**

YES NO

___ ___ All emergency phone services are equipped with a TTY.

___ ___ All staff handling emergency and non-emergency phone lines which are equipped with a TTY have been trained on how to use a TTY.

___ ___ All staff handling non-emergency phone lines which are not equipped with a TTY have been trained on how to use the TRS.

9.0 AUXILIARY SERVICES

Auxiliary services are services provided to assist a person with a disability to access a program or service.

9.1 Qualified sign language interpreter

The use of a "qualified interpreter" is probably one of the least understood requirements in communication access. When an interpreter is necessary, a "qualified" interpreter must be obtained. Qualification often correlates with certification level, but certification is not a requirement under the Americans with Disabilities Act. Effective communication is the requirement.

Often, people accompanying a person who is deaf or hard of hearing can provide interpreting services, but a department or agency cannot require a person who is deaf or hard of hearing to provide his or her own interpreter as a prerequisite to participation, because it is the responsibility of the DLNR to provide and pay for a qualified interpreter. Also, in most situations, it is not appropriate to use a family member or companion as an interpreter because his or her presence at the transaction may violate the individual's right to confidentiality, or because the friend or family member may have an interest in the transaction that is different from that of the involved person who is deaf. A person who is deaf has the right to request an impartial interpreter. The obligation to provide "impartial" interpreting services requires that the department or agency provide an interpreter who does not have a personal relationship to the individual with a disability. The state may, however, accept the services of a family member or friend or a volunteer, provided communication is effective, impartial, and at the request of the person who is deaf or hard of hearing.

9.2 Real-time captioning service providers

Real-time captioners provide simultaneous visible transcription of the speaker's words and are usually trained court reporters. Real-time captioning involves the use of a stenographic machine, a computer, real-time captioning software, and a caption encoder for putting the words on a screen. Real-time captioning services are especially useful for those people who are deaf or hard of hearing who do not use sign language and for large group events or meetings.

9.3 Computer assisted note takers

Computer assisted note takers (CAN) provide communication access for individuals who are deaf or hard of hearing. The CAN typist facilitates participation at meetings or in classrooms and interaction with other people. The CAN typist provides a summary or notes of a speaker's words typed into a laptop computer and displayed on its screen.

9.4 Auxiliary personnel

Personal assistants are usually utilized to help a person who has limited mobility or who has a visual impairment. A personal assistant may perform any of the following functions, depending upon an individual's specific needs:

- provide orientation and mobility assistance for a person who is visually impaired;
- assist with handling books, materials, or other bulky items for someone who is either mobility impaired or visually impaired;
- assist with cutting up food at a meal or carrying a plate at a buffet meal for someone with limited manual dexterity;
- assist with opening doors or reaching for items for someone who is mobility impaired.

It is usually not necessary to assign a personal assistant on a 1:1 basis for the entire duration of a training activity. By inquiring in advance of an individual's needs, one personal assistant will often suffice to meet the needs of several individuals who have disabilities. Assistance with toileting, dressing, or other activities of a personal nature need not be provided.

Note takers are utilized to prepare written notes of information presented. If an individual has a visual impairment, that person may not be able to see written charts, graphs, or other information that a speaker presents on a blackboard, flip chart, etc. If an individual has a learning disability, the person may not be able to comprehend or grasp all of the information. If an individual has a physical disability due to quadriplegia or has limited manual dexterity, the person may simply not be able to write at a speed which is necessary to capture all the information. In any of these scenarios, a note taker would then be used to write down information for a person who has a disability. Of course, any copies of notes, speeches, etc., from a presenter at a conference or workshop which can be given out would minimize the need for note takers.

**CHECKLIST
FOR PROVIDING AUXILIARY SERVICES**

YES NO

- | | | |
|---|---|--|
| — | — | Appropriate program staff know how to hire a sign language interpreter, appropriate for the situation, if requested. |
| — | — | Appropriate program staff know how to hire real time captioners, appropriate for the situation, if requested. |
| — | — | Appropriate program staff know how to hire a computer assisted note taker, if appropriate for the situation, if requested. |
| — | — | Appropriate program staff know how to hire auxiliary personnel, appropriate for the situation if requested. |

10.0 SERVICE ANIMALS

The Americans with Disabilities Act describes a service animal as any "guide, signal or service dog, or other animal individually trained to provide assistance to an individual with a disability." A service animal is sometimes called an "assistance animal."

Hawai'i Revised Statutes §515-3 provides the following definitions:

- A "guide dog" assists a person who is blind or who has low vision. The animal provides mobility guidance within the community.
- A "signal (hearing) dog" assists people with hearing loss. The animal may perform functions such as alerting persons to sounds such as the doorbell or the telephone ringing.
- A "service dog" or "service animal" assists people with mobility and other disabilities. The animal may assist people with mobility impairments by pulling wheelchairs, picking up items, carrying items or assisting persons with balance.

A service animal is NOT a pet. As a state agency, if you have a "no pets policy", you must modify your policy to allow the use of a service animal by a person with a disability. This does not mean that the "no pets" policy must be abandoned altogether, but simply that an exception must be made to your general rule for service animals.

EXAMPLE: The Department of Land and Natural Resources operates camping facilities. Pets are not permitted. However, there must be a modification of the rule to permit service animals.

A service animal must be permitted to accompany the individual with a disability to all areas of your facility where the public is normally allowed to go. An individual with a service animal may not be segregated from other people. Limitations are rare and only for those areas where health and safety may be compromised or where doing so would result in a fundamental alteration of the nature of the program, activity, or service.

EXAMPLE: The DLNR is hosting a tour of a facility. A person with a disability brings his or her assistance animal. However, the animal is disruptive by uncontrolled barking during the performance. The owner may be asked to remove the animal from the premises.

A deposit, maintenance fee, or surcharge may not be imposed on an individual with a disability as a condition for allowing a service animal to accompany the individual, even if deposits are routinely required for pets. However, a person with a disability may be charged if a service animal causes damage so long as it is a regular practice to charge non-disabled customers with no disabilities for the same types of damages.

**CHECKLIST FOR ENSURING A
FACILITY OR SITE IS ACCESSIBLE TO PEOPLE WITH SERVICE ANIMALS**

YES NO

- | | | |
|---|---|--|
| — | — | Does the facility where your program or service is offered have a "no pets policy"? |
| — | — | If YES, is there an exception for service animals? |
| — | — | Does the staff know how to approach and interact with individuals with service animals? |
| — | — | Does the facility have a designated area for a person with a disability to take a service animal to relieve itself? |
| — | — | Does the department or agency have a policy which requires the public to pay for damages incurred as a result of their negligence or intent? |

11.0 AUDIO AND AUDIOVISUAL COMMUNICATIONS

Departments or agencies which impart information to the public through audiovisual means must ensure that materials are accessible to individuals with disabilities. These may include videos, public service announcements for either television or radio, or the production or hosting of television or radio shows.

11.1 Videotapes

Videotapes developed for educational or promotional purposes by a department or agency are examples of a program, service, or activity which must be accessible to individuals with disabilities. Since videotapes are usually developed with a voiced script, they are often not accessible when viewed by an audience which includes people who are deaf or hard of hearing.

When you develop a videotape, consideration should be given to using captions, as well as preparing a written transcript of the video to ensure maximum viewing by all audiences in the future. Captioning will be off-line captioning (since it is not live) and can either be open-captioned or closed-captioned. Remember that if you choose closed-captioning, your video's captions will not show up on most screens unless it has a special decoder and is set to show the captioning. Users may not have such equipment. Therefore, it is better to open-caption your videotape, which can then be used on any machine. An open-captioned videotape is also useful for a hearing audience in a noisy setting.

You may choose to produce videos interpreted by a sign language interpreter, who translates the content while filmed in a "bubble inset" placed on the lower corner of the video screen. Although this does provide some access, captioning is a preferred means of access, since a smaller percentage of people who are deaf and hard of hearing have the ability to understand sign language compared to those who know how to read. In addition, the sign language interpreter in the "bubble inset" can often be quite small, making the interpreter difficult to view and understand.

When using or buying a videotape from another source as part of a program, service, or activity, always check to see if there is a captioned version available. As stated earlier, if given the choice, always choose an "open-captioned", rather than a "closed-captioned" version to avoid the need to find a television with a decoder when presenting the videotape. If no captioned version is available and a deaf or hard of hearing person is a part of the program, provide a sign language interpreter (see Section 3.3.1) or provide a written transcript of the videotape.

11.2 Public service announcements

When departments or agencies engage in public awareness and promotional efforts, public service announcements (PSAs) on the television or radio are often used.

EXAMPLE: The Department of Health develops a PSA to encourage teenagers to stop smoking. The PSA is to be aired on television stations as part of a month-long campaign to reduce lung cancer. The PSA must be developed to be accessible to persons with disabilities.

EXAMPLE: The Office of Elections develops a PSA to inform the public of their right to vote and how to register. The PSA is to be aired on radio stations prior to the elections to encourage voter turnout. The PSA must be developed to be accessible to persons with disabilities.

Similar to the development of videotapes, if you are developing the PSA for television, consideration should be given to using captions as well as preparing a written transcript of the PSA. The captioning will be off-line (since it is not live) which can either be open-captioned or closed-captioned. Remember that if closed captioning is used, the captions will not show up on most television screens unless a special decoder is also present. Therefore, it is better to open-caption the PSAs, which can then be viewed on any television screen. An open-captioned PSA is also useful for a hearing audience for viewing in a noisy setting.

Under the Americans with Disabilities Act, if you receive federal funds to produce your video PSA, it must be captioned.

You may choose to have your PSA interpreted with a sign language interpreter, who translates the content while filmed in a "bubble inset" placed on the lower corner of the screen. Although this does provide some access, captioning is a preferred means of access, since a smaller percentage of deaf and hard of hearing people have the ability to understand sign language compared to those who know how to read. In addition, the sign language interpreter in the "bubble inset" can often be quite small, making the interpreter difficult to view and understand.

If you develop your PSA for airing on the radio, neither captioning (in any form) or the use of a sign language interpreter will help a person who is deaf or hard of hearing. Thus, the only reasonable way you can make your PSA accessible is to have a written transcript or copy of the for-print PSA available, upon request.

11.3 Television programs

If television programs are produced by a program within DLNR, particularly for educational purposes. These shows must be accessible to persons who cannot receive the information in the same format.

Similar to the development of videotapes or PSAs, television programs must be made accessible to persons with communication limitations. Consideration should be given to using captions as well as preparing a written transcript of the program. The captioning will be off-line if the show is pre programmed, either as open-captioned or closed-captioned. Remember that if closed captioning is used, the captions will not show up in most television screens unless a special decoder is present. Therefore, it is better to open caption the program, which can then be viewed on any television screen.

When a program of the DLNR is aired as a live television program, additional considerations need to be taken in order to provide access for persons with disabilities. Hawai'i Public Television offers a live, call-in show with two-way interaction with the listening/viewing public. This program must be made accessible to individuals who are deaf or hard of hearing.

A television show with audio will not be accessible to a person who is deaf or hard of hearing. Off-line captioning, whether open or closed, will not work for live television, since off-line captioning requires advanced scripting and editing to add the captioning prior to airing. In this case, the program must consider either real-time (live) captioning or the use of a sign language interpreter in the studio. Both options will provide simultaneous translation for the live, possibly unscripted, dialog of the participants.

Don't forget that if your live television show allows the home viewing audience to call in to ask questions, talk with the participants, donate money to a telethon, etc., you should provide a TTY on the phone line to allow a person who is deaf, hard of hearing, or speech impaired to call in. Your staff should be trained to be able to receive incoming calls.

Your responsibility as a state department or agency occurs when the state sponsors or hosts the program. If you are an invited guest speaker or participant on someone else's show, they are responsible for the access obligations.

11.4 Radio programs

Some departments or agencies of the DLNR may develop a program or service on the radio as part of their outreach to the public.

If you develop your radio program, neither captioning (in any form) or the use of a sign language interpreter will help a person who is deaf or hard of hearing. Thus, the only reasonable way you can make your program accessible is to have a written transcript or a copy of the for-print PSA available, upon request.

Your responsibility as a DLNR department or agency occurs when the DLNR sponsors or hosts the program. If you are an invited guest speaker or participant on someone else's show, they are responsible for the access obligations.

**CHECKLIST FOR ENSURING THAT AUDIO AND AUDIOVISUAL
COMMUNICATIONS ARE AVAILABLE**

YES NO

- | | | |
|---|---|--|
| — | — | Videotapes and television public service announcements or shows have been captioned or interpreted with a sign language interpreter on the tape. |
| — | — | If "NO," a written transcript is available to accompany the videotape or television PSA. |
| — | — | Radio PSAs or programs have an accompanying written transcript available. |
| — | — | Live television shows with call-in options for the public have a TTY with trained staff on the phone line. |

12.0 FACILITY ACCESS

It is the policy of the DLNR to ensure that facilities or sites where we choose to operate our programs, services, or activities do not present architectural barriers which impede utilization by individuals with disabilities.

This Section provides you with the basic information on both the administrative requirements for construction, as well as the technical design specifications for an accessible facility.

12.1 New construction and alteration of buildings and facilities

The Americans with Disabilities Act, Title II, requires that all new construction and alterations of state government buildings and facilities be accessible to individuals with disabilities. Hawai'i State law, §103-50, also has a similar requirement. It states that all new construction and alterations of buildings and facilities by the state, or on behalf of the state, shall be fully accessible to and usable by people with disabilities.

The concept of "fully accessible to and usable by people with disabilities" means that the buildings and facilities must comply to a specific design standard. In federal law, this design standard is known as the Americans with Disabilities Act Accessibility Guidelines, also known as ADAAG. State law also adopts the same federal design standard, but gives the state the authority to adopt additional design guidelines which might exceed the federal ADAAG. To-date, the State of Hawai'i has adopted guidelines which exceed the federal ADAAG in the area of children's facilities and housing facilities.

The State of Hawai'i has set up a process for the review of state projects under construction or alteration by the Commission on Persons with Disabilities to ensure that the design requirements for people with disabilities are met.

If your department or agency is in the planning or construction phase for a building or facility, whether it be new construction, or alteration, you should ask your department Capitol Improvement Project (C.I.P.) coordinator or other appropriate facility staff responsible for the new construction or alteration design, if the plans have been reviewed for accessibility by the Commission on Persons with Disabilities.

12.2 Existing state buildings and facilities

If your program or service is occupying space in a state building or facility not under construction or alteration, but existing prior to the enactment of the new construction requirements of the Americans with Disabilities Act, you still have an obligation to make sure your program or service is not excluding people with disabilities due to facility inaccessibility.

If the site of your program, service, or activity is not accessible, you may "solve" the problem by:

- upgrading of your building to meet certain minimum facility requirements for program access (which are less stringent than the requirements for new construction); or
- making administrative changes, such as relocating programs or services from one site to another, or changing the manner in which the program, service, or activity is offered.

12.3 Private facilities leased by the State

If your program, service, or activity is being operated in a facility which is not state-owned, but leased from the private sector, you still have an obligation to make sure your program or service is not excluding people with disabilities due to facility inaccessibility.

If the site of your program, service, or activity is not accessible, you may "solve" the problem by:

- upgrading of the building to meet certain minimum facility requirements for program access (which are less stringent than the requirements for new construction), either through direct payment by the state or by agreement with the lessor; or
- renegotiating the changes into the lease renewal; or
- moving to another, more accessible location.

12.4 Components of an accessible site for a program, service or activity

Finding a location which is physically accessible is critical to ensuring equal access for all people who have disabilities. The components of an accessible site include the following features:

- an accessible route from a public transportation stop to an accessible entrance
- an accessible passenger loading zone with an accessible route to an accessible entrance
- accessible parking spaces with an accessible route to an accessible entrance
- accessible interior routes within the building, including elevators, hydraulic wheelchair lifts, ramps
- an accessible men's and women's rest room or unisex restroom
- an accessible water fountain along an accessible route
- an accessible public telephone along an accessible route
- accessible meeting or event rooms
- assistive listening systems
- conveniently located accessible lodging, if overnight stays are involved
- accessible emergency egress

It is important to remember that a site's accessibility features are critical, not only to individuals with mobility impairments, but also to individuals with visual and hearing impairments.

You cannot assume that a site is accessible even if staff at the site indicate so. Staff at many properties often incorrectly assume that their location is "accessible" to people who have disabilities simply because they recall that a prior individual with a disability used the site.

The term "accessible" means that an element on site meets the requirements of a design standard. Newer buildings will tend to be more accessible. But that does not mean that new sites should be presumed to be fully accessible; nor should older sites be excluded from consideration simply due to their age, as many older properties have been upgraded for accessibility. When in doubt check out the site yourself.

When you are selecting a site for a conference, workshop, or other training activity, used on a one-time basis, there are some additional considerations and challenges which must be taken into account. The arrangement in the meeting rooms are important to provide full access and comfort for people with disabilities. The meeting rooms should be set up for your audience to allow people with mobility impairments, particularly those in wheelchairs, to sit dispersed throughout the audience. The seats should be arranged so that a person using a wheelchair is able to sit with a companion or work colleague during the session. Staff should be notified to remove chairs, upon request, after the person with a disability chooses his or her seat. The chairs should not be removed in advance unless seats are assigned, as such an action would preclude a person who has a disability from choosing a location of personal preference. A very convenient seating style, particularly for classroom set-up, is a modified chevron or herringbone seating pattern, as it provides for greater mobility in the middle of the room, plus good visibility.

You should also remember to set up your training with an area to permit a sign language interpreter to be as close to the main speakers as possible. If a sign language interpreter is used, remember to set up seats for those people who are deaf or hard of hearing in the line of sight of the interpreter.

People who are blind or who have low vision will also need to sit up front to have closer access to the speakers and to see visual presentations as well.

The facility manager should be prepared to set up assistive listening systems, if requested by a person who is hard of hearing.

CHECKLIST TO ENSURE FACILITY ACCESS

YES NO

___ ___ Planned new construction or alteration: For a building or facility under new construction or undergoing a planned alteration ... have the plans and specifications been reviewed by the Commission on Persons with Disabilities for conformance to appropriate design requirements?

If NO, consult with your department ADA Coordinator, CIP Coordinator, or facility Coordinator.

___ ___ Existing state-owned site: For an existing building or facility with no planned alteration ... does the existing building or facility meet minimum requirements for program access for persons with disabilities.

If NO, consult with your department ADA Coordinator, CIP Coordinator, or facility Coordinator to ensure that the building or facility has been included in your departmental TRANSITION PLAN for the removal of barriers.

___ ___ Existing leased site: For an existing leased building or facility with no planned alteration ... does the existing building or facility meet minimum requirements for program access for persons with disabilities and the Comptroller's minimum guidelines for leased space?

If NO, consult with your department ADA Coordinator, CIP Coordinator, or facility Coordinator to ensure that the building or facility has been included in your departmental TRANSITION PLAN for the removal of barriers or has been scheduled to be moved to another location.

___ ___ Site for a meeting or activity: For a building or facility scheduled to be used for a one-time workshop, conference, or activity ... has the site been surveyed to ensure that it is appropriate and accessible for participants with disabilities?

If NO, select another site.

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